Supreme Court, U.S.
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NO. _____

IN THE

Supreme Court of the United States

RICHARD LOUIS ADAM

Petitioner

v.

STATE OF HAWAII "et al"

Respondent

On Petition for a Writ of Certiorari
to the Hawaii Supreme Court

Petition for a Writ of Certiorari

RICHARD L. ADAM
1944 Littleton Road
Monroe, New Hampshire 03771
Tel. 1 (603) 991 - 5349

QUESTIONS PRESENTED

1. Did the Hawaii Supreme Court of the State of Hawaii and or the State of Hawaii violate Petitioner's federal constitutional right to due process under the Fifth and Fourteenth Amendment when it rejected Petitioner's application for Writ of Certiorari January 11, 2007?

2. Did the Intermediate Court of Appeals for the State of Hawaii and or the State of Hawaii violate Petitioner's federal constitutional right to due process under the Fifth and Fourteenth Amendment when it denied Petitioner his right to a rule 40 petition to challenge the judgment that was obtained against petitioner in the third circuit court with planted evidence that is absolute and very clear and convincing, that was planted by Big Island police that were related to drug dealer gang that were targeting Petitioner and family?

3. Did the Intermediate Court of Appeals for the State of Hawaii and or the State of Hawaii violate Petitioner's federal constitutional right to due process under the Fifth and Fourteenth Amendment when it failed to act on the absolute and very clear and convincing evidence that Hawaii police planted false evidence in order to cover up for their relatives which are part of a local drug dealer gang that had been targeting petitioner and family for over ten years?

4. Did the Hawaii Supreme Court, Intermediate Court of Appeals for the State of Hawaii and the Third Circuit for the State of Hawaii and or the State of Hawaii violate Petitioner's right to due

process under the Fifth and Fourteenth Amendments when they allowed a false record of the Third Circuit Court due to altered and or tampered transcripts that affect and or makes a false merits of the case at hand?

5. Did the Hawaii Courts and or the State of Hawaii violate petitioner's right to due process under the Fifth and Fourteenth Amendments when they conspired on behalf of the State of Hawaii to falsely convict Petitioner and falsely imprison Petitioner even though there was absolute clear and convincing evidence of petitioner's innocence and respondent's did so for money and or petitioner's race, due to CV 98 - 00528 Federal lawsuit?

6. Did the Intermediate Court of Appeals for the State of Hawaii and or the State of Hawaii violate Petitioner's right to due process under the Fifth and Fourteenth Amendments when they allowed associate Judge Greg Nakamura to preside over this appeal, when they knew there was a conflict of interest between Judge Greg Nakamura and Petitioner?

7. Did the Hawaii Courts and or State of Hawaii violate petitioner's right to due process under the Fifth and Fourteenth Amendments when they covered up for the State of Hawaii's financial liability and interest ahead of petitioners absolute clear and convincing evidence of Petitioner's innocence?

8. Did the Hawaii Courts and or the State of Hawaii violate Petitioner's right to due process under the Fifth and Fourteenth Amendments when respondent's made false statements in their orders that petitioner's claim is "patently frivolous and without a trace of support either in the record or other evidence submitted by [Adam]" ? In blatant disregard of [Adam's and or Petitioner's] evidence that is genuine, absolute, clear and convincing

and undisputable?

9. Did the Hawaii Courts and Parole board and or the State of Hawaii violate Petitioner's right to due process under the Fifth and Fourteenth Amendments when Respondents released Petitioner from parole and or custody a few days prior to Petitioner's appeal being denied on September 29, 2006, in order to prevent Petitioner to pursue Habeas Corpus relief in Federal District Court, because Petitioner's evidence would of guaranteed Petitioner a vacated sentence and his name cleared and release from custody in Federal District Court and Petitioner had made it very clear to respondents prior that he intended to pursue a Federal claim, but respondents want this matter covered up?

10. Did the Hawaii Courts and or the State of Hawaii violate Petitioner's right to due process under the Fifth and Fourteenth Amendments when Respondents made the false statements in their orders "the issues sought to be raised have been previously ruled upon or waived"?

11. Did the Hawaii Courts and or the State of Hawaii violate Petitioner's right to due process under the Fifth and Fourteenth Amendments when respondents made a false statements in their orders "a full and fair evidentiary hearing upon that [specific] question [of fact] was held during the course of the proceedings which led to the judgment or custody which is the subject of the petition"?

12. Did the Hawaii courts and or the State of Hawaii violate Petitioner's right to due process under the Fifth and Fourteenth Amendments when respondents construed and or purposely avoided the facts and evidence that effect the Merits of this case; like the fact the only reason the third circuit Judge dismissed petitioner's rule 40 petition, was because of the motion petitioner filed in the first circuit to recuse the third circuit Judge with

shocking absolute evidence against the circuit court Judge?

13. Did Respondents violate Petitioner's due process rights under the Fifth and Fourteenth Amendments; when Respondents acted violently and angrily at Petitioner and denied Petitioner's scheduled new trial for criminal contempt of court?

14. Are Respondents acts of misconduct grounded in racial animus and or racial discrimination and ethnocentrism ?

15. Based on the evidence and motive . Did Respondents violate Petitioner's : 1^{st} , 2^{nd} , 4^{th} , 5^{th} , 6^{th} , 8^{th} , 9^{th} , and 14^{th} Amendment rights under the Constitution of the United States of America ?

LIST OF PARTIES TO THE PROCEEDINGS

The Petitioner in this case is Richard Louis Adam.

The Respondent in this case for the State of Hawaii is Prosecutor Dale Ross.

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OPINION BELOW

The order of January 11, 2007 by Moon of the Hawaii Supreme Court rejecting Petitioner's application for a Writ of Certiorari and is included in appendix "A". The Judgment on appeal of October 18, 2006 by James Burns of the Intermediate court of appeals for the state of Hawaii affirming the judgment and is included in appendix "B". The order of September 29, 2006 by associate judge Greg Nakamura and James Burns of the intermediate court of appeals for the State of Hawaii affirming the judgment of the lower court and is included in appendix "C". The order, finding of facts and conclusion of law of November 2, 2005 by Ronald Ibarra of the circuit court of the third circuit for the State of Hawaii denying Petitioner's already granted rule 40 petition and is included in appendix "D". The order of November 4, 2005 by Ronald Ibarra of the circuit court of the third circuit for the state of Hawaii denying Petitioner's already granted rule 40 petition and is included in appendix "E". The order of September 21, 2005 by Paula Nakayama associate justice for the Hawaii Supreme court dismissing appeal for lack of jurisdiction and is included in appendix "G". The order of June 1, 2005 by Ronald Ibarra of the circuit court of the third circuit denying Petitioners already granted rule 40 petition hearing and is included in appendix "H". The summary disposition order of April 20, 2005 by Lim, C.J., Foley and Fujise, JJ. of the intermediate court of appeals for the state of Hawaii affirming the lower court's judgment on resentencing / revocation of probation and is included in appendix "J". The order of February 11, 2005 by Lim, C.J., Foley and Fujise, JJ. of the intermediate court of appeals of the state of Hawaii denying Petitioner's motion for the release of exculpatory evidence that is being withheld in the form of original court reporter tapes and is included in appendix "K". The order of May 19, 2003 by Ronald Ibarra of the circuit court of the third circuit court for the state of Hawaii

granting motion to continue hearing on rule 40 petition to vacate, set aside, or correct judgment or to release petitioner from custody and is included in appendix "L". The order of February 22, 2002 by Moon, C. J., Levinson, Nakayama, Ramil, and Acoba, JJ. of the Hawaii Supreme court denying reconsideration on application for writ of certiorari and is included in appendix "M". The order of November 29, 1999 by Ronald T. Y. Moon, Robert G. Klein, Steven H. Levinson, Paula A. Nakayama and Mario R. Ramil of the Hawaii Supreme court stating that due to withheld discovery the remedy requires dismissal of the criminal charges and is included in appendix "N".

JURISDICTION

The Hawaii Supreme Court for the state of Hawaii entered an order rejecting Petitioner's application for writ of Certiorari on January 11, 2007. Petitioner has exhausted state remedy and file this Writ of Certiorari within the 90 day time limit and has therefore invoked this Court's Jurisdiction pursuant to 28 U. S. C. Section 1254 (1), because of the following compelling reasons: (1) Respondent's have violated important Federal questions in a way that conflicts with many decisions by state courts of last resort. (2) Respondent's have so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by a lower inferior court, as to call for an exercise of this Court's supervisory power. Respondent's Supreme Court of last resort have decided an important federal question in a way that conflicts with the decision of another state court of last resort and or United States court of Appeals and this Court. Respondent's have decided an important question of federal law in a way that conflicts with relevant decisions of this Court.

Also extraordinary circumstances exist in this case. Through blatant upsurtion of power and corruption and thus invoking this Court's jurisdiction under 28 U. S. C. Section 1651 to correct error by Writ of Coran Nobis.

CONSTITUTION INVOLVED

The First Amendment made applicable to the states guaranteeing the freedoms of speech, religion, press, assembly, and petition.

The Second Amendment made applicable to the states "guaranteeing the right to keep and bear arms as necessary for securing freedom....."

The Fourth Amendment made applicable to the states "prohibiting unreasonable searches and seizure and the issuance of warrants without probable cause."

The Fifth Amendment made applicable to the states that "a person cannot be deprived of life, liberty, or property without due process of law....."

The Sixth Amendment "guaranteeing in criminal cases the right to confront witnesses, the right to counsel, and the right to compulsory process for obtaining favorable witnesses."

The Eighth Amendment "prohibiting cruel and unusual punishment."

The Ninth Amendment "providing that rights listed in the Constitution must not be construed in a way that denies or disparages unlisted rights, which are retained by the people."

The Fourteenth Amendment "forbidding states from denying due process and equal protection and from abridging the privileges and immunities of U.S. citizenship."

STATEMENT OF THE CASE

I

Petitioner Richard Adam the Petitioner / Defendant in the Third Circuit Court of the State of Hawaii and the Petitioner - Appellant in the Intermediate Court of Appeals and Petitioner / Appellant in the Hawaii Supreme Court, herein (Petitioner / Adam).

Petitioner was falsely arrested and imprisoned on fabricated charges of Terroristic Threatening in the 1st degree, 2nd Degree Assault and Criminal Contempt of Court; through the acts of police misconduct, prosecutorial misconduct and judicial misconduct, similar to, 1/ Korematsu v. United States Cite as 584 F. Supp. 1406 (1984) and other cases listed in table of authorities.

Respondents have omitted a fact in their order of September 29, 2006. This order is included in appendix "C". The fact that Petitioner was sentenced to one year in prison and to be served 73 days each year over a period of five years has been omitted from this order. And while this prison sentence was pending over Petitioner; Petitioner was being manipulated and threatened by attorney Alfred Lerma and Judge Ibarra in order to get Petitioner to drop Federal lawsuit CV 98 – 00528 HG against State of Hawaii and police.

1/ Korematsu v. United States Cite as 584 F. Supp. 1406 (1984). Page 1407, lines 7 to 13. Government deliberately omitted relevant information and provided misleading information in the papers before court concerning whether the actions taken were reasonably related to the security and defense of the nation and the prosecution of the war."

II

Petitioner has been denied due process by the above mentioned courts for the state of Hawaii, herein (Respondents). Newly discovered evidence was discovered after direct appeal in 2002 and newly discovered evidence kept being discovered until 2007. Respondents granted Petitioner a rule 40 petition on February 4, 2003 due to newly discovered evidence. Petitioner filed several supplemental counts as new evidence was discovered. Respondents appointed attorney Frank Miller to represent Petitioner in the circuit court. Attorney Frank Miller convinced and or persuaded petitioner to continue scheduled hearing on rule 40 petition until the pending contempt of court charge was re-adjudicated through a new trial that he had been granted. Motion to continue hearing on rule 40 was granted and the order is included in appendix "L". The Circuit Court had found Petitioner guilty of contempt of court prior to appointing Frank Miller to replace incompetent alcoholic attorney Paul Dolan. Attorney Miller had gotten the circuit court Judge Ibarra to give Petitioner a new trial on the contempt charge. When Petitioner first met with attorney Miller, Miller advised Respondent that he would be better off with an off Island attorney; because of due circumstances, Miller had commented that he has known and worked with Judge Ronald Ibarra for over 20 years and was uneasy with the circumstances. Miller filed a Motion to recuse Ibarra as Petitioner commanded; but he did poor job, by not calling material witness, public defender Peter Brishiani and Judge Ibarra found grounds not recuse himself because he wanted to control the outcome. Attorney Frank Miller tried to get Petitioner's witnesses to sign some false declarations that would of exonerated Judge Ibarra

and his associate attorney Alfred Lerma of making a false record in the court room on april 26, 2000. (The actual declaration of these witnesses can be seen in Petitioner's Extra Ordinary Writ 04 – 1023 appendix "I" filed with this Court, herein Ex Writ 04 - 1023 .) Since attorney Miller could not be completely loyal to Petitioner, Petitioner asked him to withdraw. Judge Ibarra granted the withdrawal but was very violently angry about it and only gave Petitioner 30 days to try to hire his own private attorney. Petitioner tried to hire attorney Shawn Luiz from Honolulu. Luiz said he had an upcoming insurance claim case coming up before Judge Ibarra and was afraid to confront him and made the comment that if Petitioner did not have an attorney, Judge Ibarra would not be able to sentence him. Petitioner tried other attorneys and had no luck. Therefore, Petitioner prepare another motion to recuse Judge Ibarra and when Petitioner returned for a hearing on December 1, 2003 and tried to recuse Judge Ibarra; Judge Ibarra actually laugh at Petitioner and then got very violently hostile and denied the motion for a new trial on contempt that he had granted to attorney Frank Miller and resentenced petitioner to five years in prison without the representation of an attorney; despite Petitioners request for a competent attorney. Petitioner appealed the resentencing to the Intermediate court of appeal and Respondents affirmed the judgment of the lower court and is included in appendix "J". While in prison and undergoing the resentencing appeal Judge Ibarra appointed attorney Shawn Luiz to represent Petitioner. Attorney Luiz wrote a defective brief, so Petitioner wrote a supplemental brief to correct attorney Luiz's defective brief. The intermediate court of appeal refused to look at it and wrote an order stating that Petitioner had to go through counsel.

This order is in Ex Writ 04 – 1023 appendix "B" (7). Please note that attorney Luiz was attorney of record prior to contempt charge and is the cause of the contempt charge. Luiz had told petitioner that he had arranged for petitioner to participate by phone two weeks prior to July 29, 2003 hearing. When actually he had only notified the court the day prior and or that morning. Petitioner appeared by phone and Judge Ibarra was violently hostile because Petitioner was not present. So Judge Ibarra told Petitioner he had until August 1, 2003 to be before the court or he would find Petitioner in criminal contempt of court. Petitioner told the court that he could not afford an expensive short notice ticket. The cost would have been $3000.00. So the court said for Petitioner to turn himself in to his probation officer on August 1, 2003. And then the hearing was stopped and suppose to resume in 30 minutes. Petitioner asked Luiz to try to get the time extended to at least 10 days so Petitioner could borrow money and get an affordable ticket. Luiz said Judge Ibarra was angry and is not going to give us another moment of his time. Was Respondent's demands on Petitioner to fly from New Hampshire to Hawaii within a two day notice improper? So on August 1, 2003 respondent turned himself in to his probation officer Jim Watson in New Hampshire. Jim Watson told Petitioner that he was not going to take him into custody because he knows nothing of what is going on and was upset with Hawaii because there had not ever been any contact between him and Hawaii. Petitioner expressed some concerned about his young daughter, should police come to his residence to arrest him in the event Ibarra writes a warrant. Jim Watson assured Petitioner that would not happen and that he would call petitioner as soon as he hears something and that Hawaii has to go

through him. Respondents never contacted Petitioner's probation officer, rather respondents blew the situation out of proportion and sent a 40 man swat team to petitioner's residence with guns drawn and pointed at petitioner who had his daughter in his arms and traumatized Petitioner's daughter. All these issues were suppose to be addressed at new trial for contempt that attorney Miller had arranged and as the circuit court stated in TR October 13, 2003 page 24 lines 12 – 16. " THE COURT: We ' ll set the sentencing ..... December 1, 10 a. m., as well as the Motion for a New Trial, as well as the Motion to allow Nunc Tunc Filling of Defendant's Motion for a new Trial."

After Petitioner was in Prison in Hawaii and still under the representation of attorney Luiz. For three weeks Petitioner had not heard from attorney Luiz; and when Petitioner got a call from his sister Suzanne he was informed that attorney Luiz had been calling his family in New Hampshire asking his family for thousands of dollars so that he could keep Petitioner from being resentenced to five to ten years in prison. Petitioner relieved Luiz of his duty and asked for a court appointed lawyer and got a bunch of losers. Also in appendix "C" (6) Respondents refer to the lack of a transcript to be able to preclude Petitioner's right to counsel. How come attorney Luiz did not include this transcript. Petitioner supplied this transcript but was told he had to go through counsel. This order is in Ex Writ 04 – 1023 appendix "B" (7).

III

After the intermediate court of appeal disregarded Petitioner's supplemental motion of the foregoing and affirmed the resentencing judgment of

the circuit court on April 20, 2005. Petitioner filed on May 20, 2005 a motion to have his rule 40 petition set for a hearing before another Judge than Judge Ibarra. Petitioner mentioned in his motion that he wanted another Judge because he was going to have witnesses to testify against Judge Ibarra and this motion is included in appendix "I". Then Judge Ibarra wrote an order on June 1, 2005 denying Petitioners motion to set his rule 40 petition for a hearing and this order is included in appendix "H". Petitioner then appealed the Circuit court's order and The Hawaii Supreme court dismissed the appeal because the circuit court had not entered a judgment disposing of the petition or proceeding and therefore lacked jurisdiction and this order is included in appendix "G". Once Petitioner got notice that the circuit court had regained jurisdiction; Petitioner sent a motion to recuse Judge Ibarra before another Judge in the first circuit court. This Motion was mailed US priority delivery confirmation to the first circuit and prosecutor Dale Ross on October 11, 2005. Petitioner had enclosed a pre paid priority envelope for his filed copy. The First circuit put the motion to recuse in Petitioners pre – paid priority envelope and put a surface transportation sticker (see appendix "F") and returned the motion to Petitioner. It took over a month before the returned motion reached Petitioner. A note from the clerk was stuck on the motion stating to file it in the circuit court. First page of this recuse motion and note from clerk of the first circuit along with proof of service are all included in appendix "F". After Judge Ibarra had resentence Petitioner to five years in prison on December 1, 2003, Judge Ibarra had made a comment to attorney Mc Ferson that he wished he could of done a lot worse to Petitioner, like a much longer sentence. Attorney Mc Ferson told Petitioner's

former attorney Michael Ostendorp about this and Ostendorp relayed this information to Petitioner. In his motion to recuse "appendix F" petitioner was going to subpoena Ostendorp and Mc Ferson along with other witnesses that have declarations and affidavits in Ex Writ 04 – 1023 in appendix "I thru T". This recuse motion was deliberately sent back to Petitioner on a very slow boat; so that Respondents would have time to strategize which resulted in fraudulently disposing of Petitioner's rule 40 petition. Please note petitioner telephone number is on the motion to recuse.

IV

While petitioner's motion to the first circuit court to recuse Judge Ibarra before another judge (appendix "F") is slowly coming across the pacific ocean on a very slow boat; Judge Ibarra was on November 2, 2005 FALSEFYING a "FINDINGS OF FACT, CONCLUSION OF LAW & ORDER DENYING & DISMISSING PETITIONER'S PETITION FOR POST CONVICTION RELIEF" and this order is located in appendix "D". And on November 4, 2005 Respondent entered a FRADULENT judgment denying and dismissing petitioner's Petition for post conviction relief and this judgment located in appendix "E". And by doing so Respondents have abused their authority and deceptively deviated from the standard rule and or course of judicial proceedings and decided Federal Questions that conflict with other State courts of last resort, U S Court of appeals and conflicts with relevant decisions of this court and all the case law mentioned in the table of authorities of this Writ as follows:

(a) Appendix "D" paragraph 43, Respondent states.

"The prosecutor did not make an improper summation to the jury". Trial transcript, TR 99-019K March 3, 2000 page 43 lines 17-21 the prosecutor said to the jury in her closing argument; "The defendant was present throughout the entirety of the trial and was the only witness who was able to hear all of the other witnesses prior to testifying". This statement conflicts with, 2/ Agward v. Portuondo, 117 F. 3d. 696 (2d Cir. 1997)

(b) Appendix "D" paragraph 45, Respondents states; "The court did not instruct the jury not to believe Petitioner's testimony after and during Petitioner's testimony." Trial transcript after Petitioner's testimony, TR 99-019K March 1, 2000 P M Page 100 line 17-18 "THE COURT: He denied being the aggressor at all." page 101 line 16-17 "THE COURT: He says it never happened, your client." More of this was leaked to the jury and removed from the transcripts. Please look at appendix "N" an order from the Hawaii Supreme Court stating that the charges should be dropped. And these acts of tainting the Jury by Respondents has so far departed from the accepted and usual course of judicial proceedings and deviated from other courts of last resort including this court and conflicts with, 3/ Mason v. Hanks, 97F. 3d 887, 902 (7th Cir. 1996). See People v. Mc Claughhlin, 80 N. Y. 2d 466, 471, 606 N. E. 2d. 1357, 591 N. Y. S. 2d 966 (1992).

2/ Agward v. Portuondo, 117 F. 3d. 696 (2d Cir. 1997) (prosecutor violated petitioner's right to a fair trial by stating in closing argument that defendant's presence in courtroom during trial allowed him to tailor his testimony to match the evidence).
3/ Mason v. Hanks, 97F. 3d 887, 902 (7th Cir. 1996) ("[W] (harmless error analysis is not appropriate if the Judge told the Jury it could return a guilty verdict based on either two theories, one which was wrong, and the Jury did not say

(c) Appendix "D" paragraph , paragraph 1 and 42 , Respondent states . "1 . There is no credible evidence that the jury verdict and conviction were not supported by the evidence and testimony of the witnesses," 42 . "There was no basis for entry of a Judgment Notwithstanding the Verdict based on insufficient , tainted or false evidence ." Look at appendix "N" again and this medical report that Respondents withheld and disposition of Dr. Rogers clearly states that the states witness (John Wentworth) told the doctor that he was injured from a slip and fall and scratched himself on the lava rock and this is also supported by Dr . Manukian's expert testimony . Wentworth also told Edith Maeda and nurse Kerns that he got the injury from a slip and a fall and these two witnesses were prevented from testifying along with other witnesses which also contradicts fraudulent statement made by Respondent in appendix "D" paragraph 20 and if Petitioner's credibility comes into question before this court all of the foregoing evidence , medical reports and witnesses can be seen in appendix I to T in EX Writ 04 – 1023 . Also in Ex Writ appendix "P" is a notarized affidavit by Pavsek & Associates that police Badge no. 251 Officer G. Antolin picked up this medical record and that respondents withheld it and or hid it from Petitioner and his attorneys . And this contradicts the fraudulent statement made by Respondent in appendix "D" paragraph 28 . And you combine all this with the above facts of an improper summation to the jury by the prosecutor

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3/ which theory it used to reach the guilty verdict .) See People v. Mc Claughhlin , 80 N. Y. 2d 466 , 471 , 606 N. E. 2d. 1357 , 591 N. Y. S. 2d 966 (1992) (Reversing convictions on counts for which the Judge gave an erroneous charge to the Jury) .

and the judge telling the jury not to believe Petitioner's testimony and the fact that Respondents purposely dragged out a five day trial for three weeks so they could taint the jury and to expose the jury to false propaganda that was being released by the newspaper and media, definitely warranted a Judgment notwithstanding the verdict. And also conflicts with fraudulent statement made by Respondent in appendix "D" paragraphs 17, 19, 20, 22, 23, 28, 29, 30, 33, 37, 42, 44, 45. And the foregoing conflicts with clearly established law of State courts of last resort, U.S. court of appeals and this Court. Such cases, 4/ Irwin v. Dowd, 366 U.S. 717, 81S. Ct. 1639, 6L Ed 2d 751 (1961; 5/ Kimmelman v. Morrison, 477 U.S. 365, 373–75, 106 S. Ct. 2581, 2582 (1986); 6/ Jackson v. Virginia, 443 U.S., 307, 99S. Ct. 2781, 61L Ed. 2d. 560 (1979); 7/ Brady v. Maryland, 373 U.S. 83, 83S. Ct. 1194, 10L. Ed. 2d. 215 (1963); 8/ Kyle v. Whitly, 514 U.S. 419, 433–434, 115S. Ct. 1555, 1565, 131L. Ed. 2d. 490 (1995); 9/ United States v. Bagley, 473 U.S. 667, 682, 105S. Ct. 3375, 3383, 87L. Ed. 2d. 481 (1985); 10/ Kotteakos, 328 U.S. 750; 11/ People v. Consolazio, 40 N. Y. 2d. 446, 354 N. E. 2d 801, 387 N. Y.S. 2d 62 (1976); 12/ People v. Blagrove, 183 A. D. 2d 837, 584 N.Y.S. 2d. 86 (2d Dep't 1992); 13/ Woods v. Dugger, 923 F. 2d 1454 (11th Cir. 1991); 14/ Georgia v. Rachel 1996, 384 U.S. 780, 86 S. Ct. 1793, 16 L. Ed 2d 925;
1/ Korematsu v. United States Cite as 584 F. Supp. 1406 (1984).

4/ See Irvin v. Dowd, 366 U.S. 717, 81S. Ct. 1639, 6L Ed 2d 751 (1961) (Failure to grant a change of venue despite build - up of prejudice and a jury that was not impartial is unconstitutional)

And all the remaining cases listed in the table of authorities that are too numerous to list and all warrant dismissal of false charges and or vacating of sentence obtained through police misconduct, prosecutorial misconduct and judicial misconduct that are so far departed from what the courts of the United States of America are suppose to uphold that warrants this Court's supervisory power.

(d) Appendix "D" paragraph 16 and 34 Respondents state, "16. There is no credible evidence that the court and staff and attorneys manipulated the record to obtain Petitioner's conviction." and "34. There is no credible evidence that anyone tampered with transcripts, audiotapes and / or any other evidence." This is an other fraudulent statement made by Respondent ; because Petitioner has (1) four witnesses and their declarations that they witnessed the circuit judge and his associate attorney Alfred Lerma force Petitioner's Massachusetts Pro Hac Vice attorney Arthur Hensley make a false record of the facts. These four witnesses were prevented from testifying and were present in the Court room on April 26, 2000 when this making of a false record took place. (2) Respondent's witness (John Wentworth) forever changing story of perjuries. And on redirect on Feb. 29, 2000 A. M. Wentworth committed more perjury coached by prosecutor which was removed from the transcript, TR Feb. 29, 2000 A. M. page

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5/ Kimmelman v. Morrison, 477 U. S. 365 (1986) petitioner convicted after attorney failed to make obvious and meritorious objection to tainted evidence that formed the basis of the state's case. Therefore requiring reversible error.
See, e. g., Kimmelman v. Morrison, 477 U. S. 365, 373 – 75, 106S. Ct. 2574, 2581 - 2582 (1986) (Stone does not bar Habeus review of claims of ineffective assistance of counsel based on counsel's failure to file a timely suppression motion).

94, line 22. Wentworth had testified that a large rock was throw at him from the above cliff and that the rock had "just barely scratched him, just a little bit, just a slight burning sensation." And this was removed from the transcript on page 94, line 22. The minute order shows that there was a recess after cross examination of Wentworth at 10: 55 A. M. and the jury left the courtroom and reconvened at 11: 18 A. M. for a total of 23 minutes. The Transcript does not reflect this recess and this is where this testimony was suppose to be. Petitioner has a recorded conversation with attorney Hensley recalling this testimony. The prosecutor in her rebuttal closing TR March 3, 2000 P. M. page 13, line 25 refers to Wentworth's redirect testimony that was removed, by saying on line 25: "Mr. Wentworth was very lucky. He got grazed by this rock." Wentworth's prior testimonies were that he got a big wack to his back and went into shock and was driven into the ocean by the force of the large boulder. And if this court questions Petitioner's credibility regarding this tampering of transcripts the evidence can be seen in Ex Writ 04 – 1023 in appendices "L" "M" "N" and "T" for the following. (3) During direct appeal attorney Hensley in his opening brief had stated that the state was trying "to show that there was no prior serial harassment of Mr. Adam." On page 15 in the last part of section B of the Intermediate court of appeals opinion in case no. 23451 it says: "We were unable to locate it." And the reason they were not able to locate it is because all of Petitioner's

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6/ Jackson v. Virginia, 443 U. S. 307, 319 - 21, 99S. Ct. 2781, 2789 – 90 (1979) (Stone does not bar habeus review of due process claims alleging insufficiency of evidence supporting conviction.)

testimony and state witnesses testimony and petitioners attorney's statements regarding the decade of racial serial harassment and death threats against petitioner and his family and property were removed from the transcripts and that is why they cannot locate it. And one of the reasons this was done was to cover the fact that this matter was a collateral estoppel issue in which Petitioner had won a case prior involving this same gang that were threatening and harassing Petitioner and Family.

And this action of fraud by the circuit court departs from the accepted and usual course of judicial proceedings and conflicts with state courts of last resorts , U. S. Courts of Appeals and this Court. Such cases include, Fletcher v. Commission on Judicial Performance, 968 P. 2d 958. Ford-Kraus, 730 So. 2d. 269. Flournoy, 990 P2d. 642, 195 Ariz. 441. Gabriel v. Gabriel, 7 Haw. App. 95. 746 P2d 574 (1987). In Cannon v. Commission on Judicial Qualifications (1977) 14 Cal. 3d. 678, 122 Cal Rptr 778, 537 P2d. (1977) 898. In County v. Attorney of Maricopa County v. Superior Court of Maricopa County (1970) 11 Ariz. App 346, 464 P2d 666. In Judicial Inquiry & Review Bd. Of Supreme Court v. Fink (1987) 516 Pa 208, 532 A2d 358. In Re Crowell (1979, Fla.) 379 So 2d 107. In re Ferara, 582 N.W. 2d. 817, 458. In Re Hague (1982) 412 Mich 532, 315 NW2d 524. In re Jefferson, 753 So. 2d. 181.

7/ See Brady v. Maryland, 373 U.S. 83, 83S. Ct. 1194, 10L. Ed. 2d 215 (1963) (Upon request by the defense, the prosecution must turn over evidence to the defense if evidence is exculpatory, impeaching, or material). The Brady standard says that the prosecution must disclose evidence to the defense if evidence is exculpatory (helps prove defendants innocence) or impeaching (shows one the prosecution's witnesses might have lied).

In re Lemoine, 692 So, 2d 358. In Re McDonough (1980, Minn) 296 NW2d 648. In Re Ross (1981, Me) 428 A2d 858. In Re Terry (1975) 262 Ind 667, 323 NE2d 192. In Re Turner (1982, Fla) 421 So 2d 1077. In Re Yengo (1977) 72 NJ 425, 371 A2d 41. Johnson, Inquiry Concerning a Judge In re, 692 So. 2d. 168. Kane v. Rudich (1939) 256 App. Div. 586, 10 NY S 2d 929. Peters v. Jamieson (1964) 48 Hawaii 247, 397 P2d 575. Saint, Atty. Gen., v. Meraux, (1926) 163 La. 242, 111 So 691.

Spruance v. Commission on Judicial Qualifications (1977) 3d 778, 119 Cal Rptr 841, 532 P2d (1977) 1209. State ex rel. Atty Gen. v. Lazarus (1887) 39 La Ann 142, 1 So 361.

(c) Appendix "D" paragraph 22 and 29 Respondents state: "22. There is no credible evidence that that the rock was planted by Wentworth and Aki and/or police detective Wayne Young and/or other officers." and "29. There is no credible evidence that Detective Young or any other witness planted the rock in evidence." This is another fraudulent statement made by Respondent. New evidence was acquired during the testimony of Ex-police Captain Dale Fergustrom on June 2, 2004 in Federal District court in Hawaii. TR, CV 98-00528 HG June 2, 2004, page 241, line 24-25, Fergustrum testified: "because most of the Officers of Hawaiian decent in Kona have relatives in the Milolii Village." The first two officers to arrive were detectives Wayne Young and detective Harley Hee

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8/ Kyle v. Whitly, 514 U.S. 419, 433-434, 115S. Ct. 1555, 1565, 131L. Ed. 2d. 490 (1995) (Citation omitted) Finding that" because the net effect of the evidence withheld by the state in this case raises a reasonable probability that its disclosure would have produced a different result, | defendant | is entitled to a new trial".

and are both of Hawaiian decent and have relatives in Milolii village which form the gang that had been threatening and harassing Petitioner and family. Petitioner's wife "Michele" had been driven off the road and threatened on her way home from work on June 10, 1998 after a decade of similar threats with guns from this drug dealer gang. On June 13, 1998 Petitioner's wife Michele went back up this same one lane road on which she had been driven off 3 days prior and threatened by Jason Aki and gang. And Petitioner's wife never came back home and recently has been pronounced deceased. On July 1, 1998 Jason Aki and John Wentworth come on to Petitioner's property and assault Petitioner with rocks while Petitioner is holding their 22 month old daughter in his arms. Petitioner calls 911. While Petitioner is at the Kona police station detective Young and detective Hee and their gang member cousins Jason Aki and John Wentworth are on Petitioner's property and in Petitioner's house planting false evidence and removing evidence that incriminates Jason Aki, John Wentworth and gang. Detective Hee took pictures of the unloaded 9 mm pistol on the kitchen table and on the table were a pair of blue turquoise socks that belonged to Petitioner's wife "Michele". After this picture was taken Detective Young took one of these socks and placed it on the edge of the shoreline fronting Petitioner's property and then Detective Hee took a picture of the sock on the shoreline. A color copy of these photos are in the original copy of Petitioner's application for writ of certiorari to the Hawaii

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9/ United States v. Bagley, 473 U.S. 667, 682, 105S. Ct. 3375, 3383, 87L. Ed. 2d. 481 (1985) Sentence reversed because prosecution failed to disclose impeaching evidence, material evidence that the two prosecution witnesses had been paid to testify.

Supreme court. During Aki's and Wentworth's plot to murder Petitioner and infant they were confronted by Petitioner's 4 German shepherds and while throwing rocks at the dogs, Wentworth slipped and fell and scratched his back on the lava rock that forms the area. After police arrive and in order to cover their failed murder attempt Wentworth, Aki and detective Young accuse Petitioner of starting it by assaulting Wentworth from a 75 foot cliff with a monster boulder. Petitioner's neighbor was sitting on her porch and had a very clear view of Petitioner standing on his porch. Petitioner's neighbor "Georgia Mylan" also had a very clear view of Petitioner's backyard and testified: TR 99-019K Feb. 24, 2000 P M, pages 18, 19, line 18-25 by attorney Hensley: "Q. Could you see 6 feet above the ground? For example, a person standing at the cliff would have been visible to you, is that correct?" Answer by Georgia Mylan: "21: Yes" "22-23 Q. And you saw no one standing at the cliff at any time, did you? "24 A. No." "25 Q. When the yelling was going on and after the yelling was over, you didn't see anyone at the cliff at all, did you?" Page 19, line 3 "A. No." Page 22, lines 1 - 25. "1 Q. Earlier. And during the whole time that you were there watching, you never at any time saw Richard Adam, other than the point at which he was up on the porch on the second floor looking at the woman." "line 5 A. Exactly." "line 6 Q. You never saw him by the water?" "line 7 A. No." "line 10 Q. You never saw him pick up anything?" "line 11 A. No." "line 12-13 Q. When you saw

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10/ Kotteakos, 328 U. S. 750 Brecht also included an exception, stating that a deliberate and especially serious error, or one combined with a pattern of prosecutorial misconduct, might warrant Habeus relief even if it did not "substantially influence" the jury's verdict.

him standing on the porch, looking at the woman with the pickup truck, was he holding anything?" "line 15 A. I don't recall." "line 16 Q. Do you recall he was holding his child?" "line 17-18 A. I think the child was at the door, but I'm not sure." " line 19–20 Q. You do recall that the child was in close proximity to where he was." "line 21 A. Yes." "line 22 Q. Very close to him." "line 23 A. Yes." "line 24 Q. Either standing up or being held by Him?" "line 25 A. Perhaps, yes."

At the preliminary hearing John Wentworth had testified that he had been knocked into the ocean by the force of large boulder thrown at him and that he and Aki had swam a quarter mile south past the point and climbed out of the ocean and went to his pick up and from there went to Petitioner's property to confront him. Quote TR 99–019K January 28, 1999 page 48, line 18 to 24, line 18 by attorney Michael Ostendorp: "Q. Oh, yeah. I'm not trying to argue with you. I just got to get the sequence down because I wasn't there. So you and Aki and your girlfriend are *standing out at the truck*, and you're ticked off? Answer by Wentworth: "A. (The witness moves his head up and down.) "Q. But you could have driven off, correct? "A. Right."

Now compare with Wentworth's testimony at trial TR 99–019K Feb. 29, 2000 AM page 58 lines 5–6: "5 Q. What did you tell officer Freitas?" Wentworth "6 A. *I climbed right up this cliff*."

At preliminary Wentworth testified: TR 99–019 January 28, 1999 page 27 line 5–25. Wentworth " A. I had my back towards the cliff. Now at trial

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11/ People v. Consolazio, 40 N.Y. 2d. 446, 354 N.E. 2d 801, 387 N.Y.S. 2d. 62 (1976) Rosario violation raised on direct appeal is per se reversible error.

TR 99 – 019K Feb. 29, 2000 A M page 30 line 11 – 12: "Q. You were facing towards the shoreline." Wentworth "A. The cliff."

At preliminary Wentworth testified: TR 99 – 019K January 28, 1999 page 45 line 22 – 23: "Q. Did you know -- did you ever see the dogs?" Wentworth "A. No." At beginning of trial Wentworth denied seeing the dogs but on TR 99 – 019K March 3, 2000 AM line 20 – 22: "Q. When you were picking opihi, they came down?" Wentworth "A. YES."

Detective Wayne Young testified TR 99 – 019K Feb. 29, 2000 AM page 121 line 21 – 24 "that the cliff was too steep for him to recover the alleged rock and that he was afraid to get hurt so he sent Aki to retrieve it. Please note that detective young's police reports state that he sent Wentworth to recover it. New evidence revealed that detective Young is a Professional kick boxer. And it is a known fact that Petitioner's property has a gradual access to the shoreline that a person with crutches could access it. Detective Wayne Young was perjuring himself and distancing himself from the rock and "Michele's" sock he planted by saying he could not access the area because he was afraid he was going to hurt himself. Also TR 99 – 019K March 1, 2000 A M, page 30, detective Wayne Young testified he allowed Aki and Wentworth to roam about freely on Petitioner's property; and this was suppose to be a guarded crime scene. Aki, Wentworth and Santos are all convicted felons for violence, theft and drugs.

12/ People v. Blagrove, 183 A. D. 2d 837, 584 N. Y. S. 2d. 86 (2d Dep't 1992) Prosecution delay in turning over to defense material relating to a prosecution witness's will only result in a reversal if the defense was "substantially prejudiced" by the delay.

While Aki, Wentworth and Santos were allowed to roam around on Petitioner's property which was suppose to be a guarded crime scene. Other evidence was planted and removed. All the large boulders Wentworth threw at Petitioner, vehicles and house were removed. Wentworth had testified that his reason for being at Petitioner's residence was because he was picking opihi (a shell fish). Wentworth testified that he had a white pillow case attached to his waste that he was using this bag to collect opihi. Petitioner testified that he never saw Aki or Wentworth with a bag of any type. A white pillow case attached to one's waste would be quite noticeable. Especially someone with dark skin like Wentworth and Aki a white pillow case would stand out. Wentworth testified that he was thrown into the Ocean by the force of a rock thrown at him. Petitioner's attorney Arthur Hensley had a real problem with this story. Wentworth testified that he dropped his opihi bag by Petitioner's fence and then started throwing rocks at Petitioner. TR 99-019 K Feb. 29, 2000 A M page 11, line 13 to 15. "13 Mr. HENSLEY: There are seven of them. (Defendant's 01, 02, 03, and P1, P2, P3, & P4 were marked for identification.) Attorney Hensley submitted 7 pictures of the so called opihi bag and questioned Wentworth very little about it. Hensley saved it for his summation. TR 99-019K March 3, 2000 A M page 83, line 13 to 23. "The opihi bag doesn't lie. The opihi bag was a pillow case. Dip a pillow case in salt water. Drop it on the ground and it will lie there flat. Leave it in the sun, and as the

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13/ Woods v. Dugger, 923 F. 2d 1454 (11th Cir. 1991) (extensive pre-trial publicity and presence of uniformed prison guards in audience at trial when victim was a prison guard deprived defendant of a fair trial)

hours go by, the opihi bag will dry out, but it will never fluff up. We put in seven photos of the opihi bag. The opihi bag is fluffed up. The opihi bag was never moved from the time John Wentworth dropped that opihi bag on the ground. That was made very clear. Look Ladies and Gentlemen, at the opihi bag. The opihi bag was never wet. It was dry."

When Petitioner filed his rule 40 petition on February 3, 2003 he had discovered lots of new evidence that was not presented at trial. After looking at the pictures of John Wentworth injuries that he sustained when he slipped and fell and recalling all of Wentworth's perjuries under oath. Petitioner having a degree in Mechanical Theory and a professional in the mechanical trade made a brilliant discovery of new evidence. Wentworth's injuries or scratches on his back are at a proximate 45 degree angle and they have a curve to them and they follow the curvature of his back and spine evenly. No matter what perjury of Wentworth or any state witness for that matter. And no matter what position Wentworth accused Petitioner of being. There is absolutely no mechanical, physical or scientific evidence that the trajectory of a rock thrown from any position or scenario in Wentworth perjured testimony that would match the angle of the abrasions on Wentworth's back; not even close. A

14/ Quoted: Georgia v. Rachel 1996, 384 U.S. 780, 86 S. Ct 1793, 16L. Ed 2d 925. On page 339 it say: "It has been argued that, under a realistic appraisal of the facts given case, the Supreme Court today would recognize the right to removal under $ 1443 (1) even where no legislative denials of rights is shown. See Kreiger, "Local Prejudice and removal of criminal cases from state to Federal courts," 19 St. John's L. Rev. 43 (1944); Note, "Local Prejudice in criminal cases," 54 Harv. L. Rev. 679, 685-686 (1941).

sketch and diagram and picture of Wentworth's scratches were with the rule 40 petition and with Petitioner's Writ of Coran Nobis to the Hawaii Supreme Court for ineffective and defective assistance of appellate counsel. And this matter has so far departed from the accepted and usual course of judicial proceedings and conflict with many state courts of last resort, Court of Appeals and this Court. And such cases are; 1/ Korematsu v. United States Cite as 584 F. Supp. 1406 (1984). 15/ Ballinger v. Kerby 3F. 3d 1371 (10th Cir. 1993). 6/ Jackson v. Virginia, 443 U. S. 307, 319-21, 99S. Ct. 2781, 2789-90 (1979). 5/ Kimmelman v. Morrison, 477 U. S. 365 (1986). 10/ Kotteakos, 328 U. S. 750 Brecht. 3/ Mason v. Hanks, 97F. 3d 887, 902 (7th Cir. 1996).

(f) Appendix "D" paragraph 24 Respondents state: "There is no credible evidence that petitioner was exposed to Double Jeopardy by being acquitted in District Court for a traffic citation issue before this proceeding arose. The issue of collateral estoppel was litigated before the trial court and appealed."

The trial Court Judge and his associate attorney Alfred Lerma. The circuit court judge forced Petitioner to accept Lerma to be in charge of Petitioner's case as a condition of Pro Hac Vice for Petitioner's Massachusetts attorney Arthur Hensley. Lerma had a conflict of interest and so did the circuit court judge and both were interested in controlling the outcome. Lerma and the circuit court judge had no intention of executing the one year jail

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15/ Ballinger v. Kerby 3F. 3d 1371 (10th Cir. 1993), where Habeus petitioner obtained Habeus relief when the prosecution withheld a photograph showed that the witness who claimed he looked through a bedroom window and saw the defendant with the victim could not have done so, since the window was covered with thick plastic.

sentence that they held over petitioner's head in order to make him drop the federal lawsuit; they just wanted to control the outcome and Petitioner. TR 99-019K March 1, 2000 A M page 109 lines 13 to 17, The circuit court judge prevented petitioner from testifying on issues that would establish collateral estoppel. TR 99-019K Feb. 29, 2000 P M page 59 lines 6 to 14, The circuit court judge prevented Petitioner's attorney Arthur Hensley from cross examining Jason Aki of his connection with Delfredo Llanes in which would of also established collateral estoppel. There was multiple motions by two attorneys and Petitioner to recuse this circuit court judge and since he had an interest in the case and wanted to control the outcome he manipulated Petitioner and his attorneys in order not to recuse himself. And Respondents have fraudulently decided Federal Questions that conflict with state courts of last resort and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power and conflict with the following cases: 16/ Brown v. Myers, 137 F3d 1154 (9th Cir. 1988). 17/ Coleman v. Thompson, 501 US 722, 754, 111S. Ct 2546, 2567, 115L. Ed 640 (1991). 18/ In re Lemoine, 692 So. 2d 358, 96-0-2116 (La. 4/4/97). 5/ Kimmelman v. Morrison, 477 U. S. 365 (1986). 3/ Mason v. Hanks, 97F. 3d 887, 902 (7th Cir. 1996). 3/ See People v. Mc Claughhlin, 80 N. Y. 2d 466, 471, 606 N. E. 2d. 1357, 591 N. Y. S. 2d 966 (1992). 19/ See U. S. v. Smith, C. A. 11 (Fla) 1985, 757, F. 2d. 1161 Double Jeopardy. 20/ See U. S. v. Standefer, C. A. Pa. 1979, 610 F. 2d, 1076,

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16/ Brown v. Myers, 137 F3d 1154 (9th Cir. 1988) (Counsel failed to investigate and present available testimony supporting petitioners alibi).

affirmed 100 S. Ct. 1999, 477 U.S. 10, 64L. Ed. 2d 689. Dorrance v. Lee, 90 Hawai'i 143, 148, 976 P. 2d 904, 909 (1999).

V

The Intermediate court of appeals for the state of Hawaii affirmed the circuit court decision and copied the lower courts order and this order is included in appendix "C". If this Court will note that the associate judge that affirmed this order is Greg Nakamura. Judge Greg Nakamura is a big Island judge for the third circuit. Judge Ibarra is Greg Nakamura's boss. Judge Ibarra is the same Judge that denied Petitioner's rule 40 Petition and is responsible for most of the foregoing misconduct. Judge Ronald Ibarra and Judge Greg Nakamura and attorney Alfred Lerma are friends and associates. Lerma is a Hawaiian civil rights activist. Lerma, Ibarra and Nakamura are all of Hawaiian decent and they all have relatives that live in Milolii village that forms the gang that was terrorizing and threatening and Assaulting Petitioner and family. Lerma has represented some of these gang members on some very serious drug charges before Judge Ibarra and they all got away with a slap on the hand and one of these issues Petitioner is referring to involved the Casuga's in 1997. Lerma, Ibarra and Nakamura go fishing together in Milolii area.

18/ La. 1999. Judge's failure to recuse himself in criminal case in which his association with attorneys who appeared required his recusal warranted public censure. LSA-C. Cr. Part. 671 In re Lemoine, 692 So. 2d 358, 96-0-2116 (La. 4/4/97).

And if they were to implicate this gang in any way it would not be safe for them to ever go fishing in Milolii ever again ; because Milolii village is a haven for some very dangerous criminals that form this gang .

Judge Greg Nakamura had a big conflict to preside over this appeal , because he had an interest in the outcome . Cover up for his friends and associates Ibarra and Lerma is one . Covering up for his own misconduct is the other . The outcome of the appeal Nakamura was participating in had a direct effect on his misconduct done to Petitioner in another case related to this one that Nakamura presided over . The guardianship case that Nakamura was presiding over was a direct result of all the police misconduct that was done in this case . Nakamura violated Petitioner's spousal rights . Wrote an order and had vehicles sold that were titled to petitioner . Wrote an other order and had Petitioner's family home sold for $35,000.00 and a year later they resold it for $80,000.00 and Respondents pocketed $45,000.00 through kickbacks and the same was done with Petitioner's vehicles . They were sold at a minor fraction of there value and Respondents got money from kick backs . Nakamura tampers with his transcripts just like Ibarra does . Petitioner made several motions to recuse this crooked judge but like Ibarra , Nakamura had an interest and wanted to control the outcome . And the Guardianship case is on appeal before the Intermediate court of appeals for the state of Hawaii

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19/ See U. S. v. Smith , C. A. 11 (Fla) 1985 , 757 , F. 2d. 1161 Double Jeopardy Clause encompasses principles of collateral estoppel , so that if the Government were to prove the same factual issue in two trials , an adverse decision in the first trial would prevent relitigation of that issue if it was critical to the first prosecution .

at this time, lower court case no. G 99-003K, appeal no. 28158. Petitioner felt very violated when he saw that the associate Judge that decided this appeal was Greg Nakamura.

As a result of this conflict of interest an improper decision was made; which has so far departed from the accepted and usual course of judicial proceedings as to make a mockery of the justice system by these state courts as to call for an exercise of this Court's Supervisory power. And this decision conflicts with these case. Kane v. Rudich (1939) 256 App. Div. 586, 10 NY S 2d 929. Saint, Atty. Gen., v. Meraux, (1926) 163 La. 242, 111 So 691. State ex rel. Atty Gen. v. Lazarus (1887) 39 La Ann 142, 1 So 361. Judicial Inquiry & Review Bd. Of Supreme Court v. Fink (1987) 516 Pa 208, 532 A2d 358. 18/ In re Lemoine, 692 So. 2d 358, 96-0-2116 (La. 4/4/97).

CONCLUSION AND REASON TO GRANT THIS WRIT

All evidence presented in Petitioner's rule 40 petition was new evidence and was not waived by Petitioner. As Petitioner discovered evidence and learned how to admit it Petitioner did so. As, for example. Petitioner knew attorney Lerma was defective counsel and rendered his pro hac vice attorney Arthur Hensley ineffective. Lerma had

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See U.S. v. Standefer, C.A. Pa. 1979, 610 F. 2d, 1076, affirmed 100 S. Ct. 1999, 477 U.S. 10, 64L. Ed. 2d 689, under application of doctrine of collateral estoppel growing out of this clause, prosecution may not seek, through the device of separate trials on each count brought against the particular defendant, to repeat litigating the same basic issues until it is ultimately successful.

prevented Hensley from objecting to the planted rock that Respondents put into evidence that formed the basis of Respondents case. And Lerma also prevented Hensley to file a timely suppression motion. Ibarra and Lerma forced Hensley to make a false record on April 26, 2000 in front of 4 witnesses. Once Petitioner learned what to do, after he fired these attorneys that he could file a Writ of Coran Nobis in the Hawaii Supreme Court for ineffective assistance of counsel, Petitioner did so and it was filed on Dec. 7, 2004.

And in this case counsels failure to make a meritorious objection to tainted evidence and file a timely suppression motion was a major failure. Hensley had commented to Petitioner that he should of objected to the tainted evidence, but it was too late. So Hensley addressed it after the fact in a motion not withstanding the verdict. 6/ Jackson v. Virginia, 443 U.S. 307, 319-21, 99S. Ct. 2781, 2789-90 (1979). 16/ Brown v. Myers, 137 F3d 1154 (9th Cir. 1988). 17/ Coleman v. Thompson, 501 US 722, 754, 111S. Ct 2546, 2567, 115L. Ed 640 (1991). 5/ Kimmelman v. Morrison, 477 U.S. 365 (1986) See, e.g., Kimmelman v. Morrison, 477 U.S. 365, 373-75, 106S. Ct. 2574, 2581-2582 (1986) (Stone does not bar Habeus review of claims of ineffective assistance of counsel based on counsel's failure to file a timely suppression motion).

It is also quite clear that Judge Ibarra fraudulently stated that there was no evidence on each of Petitioner's 45 counts; in order to avoid the Motion in appendix "F" to recuse him.

Petitioner's attorney tried to show the criminal record of John Wentworth and was denied and on appeal quoted: State v. Basque, 66 Haw. 510, 666 P. 2d 599 (1983). State v. Lui, 61 Haw. 328, 603 P. 2d 151 (1979). and State v. Estrada, 69 Haw.

204, 738 P. 2d 812 (1987). Which are cases that the states witnesses criminal records were allowed. But in this case the criminal records of state witnesses were denied. If the Jury would of known that Jason Aki, John Wentworth and Denise Santos were violent criminals and thieves and drug dealers. With this knowledge the Jury would of more than likely not be swayed by Judge Ibarra telling them not to believe Petitioner's testimony and or not likely be swayed by the 5 day trial that was dragged out over 3 weeks to slander Petitioner with false propaganda through the media and not be swayed by the prosecutor making an improper summation telling the Jury that Petitioner tailored his testimony to match the evidence since he was the last one to testify. 2/ Agward v. Portuondo, 117 F. 3d. 696 (2d Cir. (1997). 3/ Mason v. Hanks, 97F. 3d 887, 902 (7th Cir. 1996). 3/ See People v. Mc Claughhlin, 80 N. Y. 2d 466, 471, 606 N. E. 2d. 1357, 591 N. Y. S. 2d 966 (1992).

Based on all the foregoing Petitioner's due process rights have been blatantly violated and abused. And based on the foregoing, Respondent's have deviated so far from the standard rules and course of judicial procedure, as to call for an exercise of this Court's Supervisory Powers for the public good.

Petitioner is therefore asking this Court to accept this Writ of Certiorari and clear Petitioner's name by vacating the fraudulent sentence by what ever means or Writ this Court chooses.

I Richard Adam swears that all the foregoing is true under penalty of Perjury.

Dated: Monroe, New Hampshire on March 17, 2007

Respectfully and Truthfully Submitted,

Richard Adam

RICHARD ADAM

FILED: 2007 JAN. 11 AM 9:51 NORMA T. YARA
CLERK. APPELLATE COURTS
STATE OF HAWAI'I
APPELLATE COURT SEAL STATE OF HAWAI'I

NO. 27630

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RICHARD ADAM, Petitioner - Appellant,
vs.
STATE OF HAWAI'I, Respondent - Appellee.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(S. P. P. NO. 03 – 1 – 001K)

ORDER REJECTING APPLICATION FOR WRIT OF CERTIORARI

(By: Moon, C.J., for the court[1])

Petitioner – appellant Richard Adam's application for writ of certiorari, filed December 4, 2006, is hereby rejected.

Dated: Honolulu, Hawai'i January 11, 2007

RICHARD ADAM,
PETITIONER – APPELLANT,
appearing pro se,
on the application

FOR THE COURT:

"S/

CHIEF JUSTICE

[1] Considered by: Moon, C.J., Levinston, Nakayama, Acoba, and Duffy, JJ.

FILED: 2006 OCT. 18 AM 9:45 E. M. RIMANDO
CLERK. APPELLATE COURTS
STATE OF HAWAI'I
APPELLATE COURTS SEAL STATE OF HAWAI'I

NO. 27630

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

RICHARD ADAM, Petitioner – Appellant,

v.

STATE OF HAWAI'I, Respondent – Appellee

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S.P.P. NO. 03 – 1 – 001K)

JUDGEMENT ON APPEAL

(By: Burns, C.J., for the court [1])

Pursuant to the Summary Disposition Order of the Intermediate Court of Appeals of the State of Hawai'i entered on September 29, 2006 the Judgment of the Circuit Court of the Third Circuit entered on November 4, 2005 is affirmed.

Dated: Honolulu, Hawai'i, October 18, 2006.

FOR THE COURT

"S/

CHIEF JUDGE

---

[1] Burns, C.J., Lim and Nakamura, JJ.

FILED: 2006 SEP 29 AM 8:45 E. M. RIMANO
CLERK. APPELLATE COURTS
STATE OF HAWAI'I
THIS ORDER DOES NOT HAVE A COURT SEAL

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS OR THE PACIFIC REPORTER

NO. 27630

IN THE INTERMEDIATE COURT OF APPEALS

FOR THE STATE OF HAWAI'I

RICHARD ADAM, Petitioner – Appellant,
v.
STATE OF HAWAI'I, Respondent – Appelle

APPEAL FROM THE CIRCUIT COURT OF THE THIRD CIRCUIT
(S. P. P. NO. 03 – 1 –001K)

SUMMARY DISPOSITION ORDER

(By: Burns, C. J.; Lim and Nakamura, JJ.)

Petitioner – Appellant Richard Adam (Adam), pro se, appeals the Judgment entered on November 4, 2005 in the Circuit Court of the Third Circuit.

On April 27, 2000 the court entered a judgment convicting Adam of (1) Assault in the second Degree, Hawaii Revised Statutes (HRS) 707 – 711 (1) (d) (1993), and (2) Terroristic Threatening in the First Degree, HRS 707 – 715 (1) and 717 – 716 (1) (d) (1993), and sentencing him to probation for five years for each count. On November 16, 2001, in response to Adam's appeal,

this court affirmed the April 27, 2000 judgment.

On September 13, 2002, Respondent-Appellee State of Hawai'i filed a motion for revocation of Adam's probation and commenced contempt of court proceedings against Adam. An order resentencing after revocation of probation and the Judgment sentencing Adam for Criminal Contempt of Court were filed on December 1, 2003. Adam was sentenced to thirty days imprisonment for Criminal Contempt of Court and imprisonment for an

1 (The Honorable Ronald Ibarra presided.

" indeterminate period of Five (5) YEARS for each" of the two other crimes. All terms were concurrent. On April 20, 2005, in appeal no. 26259, the December 1, 2003 order and judgment were affirmed by a summary disposition order wherein this court held that (1) the circuit court did not abuse its discretion in revoking Adam's probation and resentencing him, (2) Adam failed to show a clear and precise demonstration of prejudice on the part of the circuit court judge, (3) The circuit court did not err in accepting Adam's decision not to request a trial before a different judge, (4) There was substantial evidence to support the circuit court's decision that Adam willfully disobeyed the court and was guilty of Contempt of court, (5) the circuit court did not abuse its discretion by sentencing him without granting Adam additional time to hire a private attorney, and (6) the lack of a transcript precluded this court from considering Adam's Contention that the circuit court failed to comply with the right-to-counsel and waiver-of-counsel requirements stated in State v. Char. 80 Hawai'i 262, 267, 909 F. 2d 590, 595 (App. 1995), and State v. Dickson, 4 Haw. App. 614, 673 P.2d 1036 (1983).

On February 4, 2003 pursuant to Rule 40, Hawai'i Rules of Penal procedure (HRPP), Adam

filed a "Petition for Post – Conviction Relief (Rule 40 Petition)" asserting thirty – two grounds. On February 5, 2003, Adam filed additional exhibits to "complete" the rule 40 petition. On January 2, 2004, Adam filed a document asserting nine additional grounds. On February 18, 2004, Adam filed one document asserting one ground and a second document asserting six grounds. On March 5, 2004, Adam filed a document asserting one more ground.

On May 20, 2005, Adam filed a "Motion to Have My Rule 40 Petition on Terroristic Threatening and Assault and Contempt of Court set for a Hearing". A June 1, 2005 order denied this motion on the basis " that [Adam ' s claims are patently frivolous and without trace of support either in the record or from evidence submitted by [Adam] ."

On June 16, 2005, Adam filed a "Notice of Appeal of the Circuit Court Judge Ibarra ' s Denial of my Motion to Have My Rule 40 Petition on Terroristic Threatening and Assault and Contempt of Court Set for a Hearing". On September 21, 2005, the Hawai'i Supreme filed an order dismissing Adam's June 16, 2005 appeal because "the circuit court has denied a hearing in SPP No. 03 – 1 – 0001K pursuant HRPP 40 (g) (2). Thus, the appeal of the June 1, 2005 order denying a hearing is premature and we lack jurisdiction."

On November 3, 2005, notwithstanding the June 1, 2005 order and the fact that there was no evidentiary hearing to support any findings of fact, the circuit court entered " Findings of Fact, Conclusions of Law and Order Denying & Dismissing Petitioner ' s Petition for Post Conviction Relief".

On November 4, 2005, the circuit court entered the Judgment that " denied and dismissed" Adam's February 4, 2003 Rule 40 Petition. On November 28, 2005, Adam filed a notice of appeal.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties and duly considering and applying the law relevant to the issues raised and arguments presented, we hold that the circuit court properly denied Adam's Rule 40 Petition. We do so on the grounds that (1) "the issues sought to be raised have been previously ruled upon or were waived [,]" HRPP Rule 40 (a) (3), (2) "a full and fair evidentiary hearing upon that [specific] question [of fact] was held during the course of the proceedings which led to the judgment or custody which is the subject of the petition," and/or (3) Adam's claim is patently frivolous and without trace of support either in the record or from other evidence submitted by [Adam,]" HRPP Rule 40 (f).

Therefore, IT IS HEREBY ORDERED that Judgment entered on November 4, 2005 is affirmed.

Dated: Honolulu, Hawai'i, September 29, 2006

On the briefs:

"S/
CHIEF JUDGE

Richard Adam
Pro Se Petitioner – Appellant.

ASSOCIATE JUDGE
GREG H. NAKAMURA

Dale Yamada Ross,
Deputy Prosecuting Attorney,
County of Hawai'i,
for Respondent – Appellee.

ASSOCIATE JUDGE

FILED: 2005 NOV – 3 AM 10: 49 Lani Ng.
CLERK THIRD CIRCUIT COURT
STATE OF HAWAII
THIRD CIRCUIT COURT SEAL
STATE OF HAWAII
I hereby certify that this is a full, true and correct copy of the original on file in this office. "S/ Lani Ng. Clerk, Third Circuit Court, State of Hawai'i

CC: Richard Adam
Dale Y. Ross, Esq.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD ADAM	) SPP. NO. 03 – 1 – 003K
	) FINDINGS OF FACT,
vs	) CONCLUSION OF LAW &
	) ORDER DENYING & DIS –
STATE OF	) MISSING PETITIONER'S
HAWAI'I	) PETITION FOR POST
	) CONVICTION RELIEF
Defendant.	)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DENYING & DISMISSING PETITIONER'S PETITION FOR POST CONVICTION RELIEF

The Court having considered the Petition for Post Conviction Relief filed February 4, 2003, the State's Answer to Defendant's Second Petition For Post Conviction Relief And To Vacate or Set Aside Judgment, filed April 7, 2003, Petitioner's Supplemental Counts For Rule 40 Petition, filed January 2, 2004, Petitioner's 4th Supplemental Rule 40 Ground HHH filed February 18, 2004, Petitioner's 2nd Supplemental of Grounds For Rule 40 Petition In

Violation of My Constitutional Rights, Thus Raising a Claim For Future Federal Habeus Corpus, filed February 18, 2004, the State's Response To Supplemental Counts For Rule 40 Petition filed February 24, 2004, Petitioner's Response to State's Response By Dale Ross To Supplemental Counts For Rule 40 Dated February 24, 2004, filed March 5, 2004, 2004, finds and concludes as follows:

FINDINGS OF FACT

The Court makes the following findings of fact. If it should be determined that any of these findings of fact should have set forth as conclusion of law, then they shall be deemed as such.

1. There is no credible evidence that the jury verdict and conviction were not supported by the evidence and testimony of the witnesses.
2. There is no credible evidence that the prosecutor told and / or instructed the witnesses what to say and do.
3. There is no credible evidence that Defendant's conviction was obtained by the prosecutor telling Dr. Rogers what to say to coincide with the story she gave to Wentworth.
4. There is no credible evidence that the prosecutor made up excuse for Dr. Rogers not to testify.
5. There is no credible evidence that the conviction was obtained because Petitioner's attorney, Alfred Lerma, had a conflict of interest.
6. There is no credible evidence that the conviction was obtained because Petitioner's attorneys were incompetent, biased and / or ineffective.
7. The conviction was not obtained by improperly keeping out John Wentworth's criminal record. The Court determined that the criminal record of

complaining witness was not relevant. The issue was raised and adjudicated on appeal.

8. There is no credible evidence that the conviction was obtained because the Judge failed to recuse himself. Further, Petitioner had the opportunity but did not appeal the Court's denial of his Ex Parte Motion for Recusal thus waiving the issue.

9. There is no credible evidence that the conviction was obtained because all of Petitioner's evidence was excluded. Defendant was able to testify regarding specific instances of harassment and his interaction with the police. Further several Defense exhibits were admitted.

10. There is no credible evidence that the conviction was obtained because Petitioner was not allowed to testify to make the connection between Wentworth and Aki and the Milolii gang; Petitioner was not denied due process.

11. There is no credible evidence that the conviction was obtained because the Court excluded evidence of Petitioner's state of mind. The Court permitted Petitioner to testify about his state of mind over the State's objection.

12. The conviction was not obtained as a result of a conflict created between Petitioner and his first attorney Ostendorp. Ostendorp's motion to continue trial was denied. Ostendorp then sent an associate to appear at trial who was not prepared to proceed. Petitioner did not raise this issue thereafter.

13. Prosecutor Dale Ross did not have a conflict of interest in prosecuting Petitioner nor is there any credible evidence that she had witnesses make false statements.

14. There is no credible evidence that Petitioner was being slandered by the Prosecutor and staff to his attorney Shawn Luiz regarding being responsible for his wife's disappearance and his house burning to

the ground. Moreover this is irrelevant to the current proceeding.

15. There is no credible evidence that the conviction was obtained because the Court put attorney Alfred Lerma in control of the case. Pro Hac Vice counsel defended Petitioner.

16. There is no credible evidence the the Court and staff and attorneys manipulated the record to obtain Petitioner's conviction.

17. There is no credible evidence that the jurors who sat on Petitioner's case had conflicts of interest in the community nor were they biased against Petitioner. The jurors were voir dired on the issues of pretrial publicity and familiarity with the Petitioner.

18. There is no credible evidence that the conviction was obtained by way of a coerced confession or confusion of Petitioner.

19. There is no credible evidence that the prosecutor failed to properly disclose to the defense evidence favorable to the Petitioner.

20. There is no credible evidence that the conviction was obtained due to the absence of a key and material witness, Petitioner's daughter. Petitioner's daughter was less then two years old at the time of the incident which formed the basis for the charges against Petitioner. Petitioner fails to specify the nature of her testimony.

21. There is no credible evidence that the conviction Arthur Hensley was bought off by the State of Hawaii and / or the county of Hawaii and / or because some other party made Hensley a deal.

22. There is no credible evidence that the rock was planted by Wentworth and Aki and / or police detective Wayne Young and / or other officers.

23. There is no credible evidence that Petitioner's conviction was obtained because of excessive slander

and propaganda from the media or news based on false statements made by Jason Aki, John Wentworth and / or the police. Jurors were instructed by the Court not to watch television, read the newspaper or listen to the radio.

24. There is no credible evidence that Petitioner was exposed to Double Jeopardy by being previously acquitted in District Court for a traffic citation issued before this proceeding arose. The issue of collateral estoppel was litigated before the trial court and appealed.

25. There is no credible evidence that Petitioner's conviction was obtained by use of evidence seized in an unlawful arrest.

26. There is no credible evidence that Court was involved in any search warrants regarding the Petitioner, his missing wife or their property.

27. There is no credible evidence that Judge Florendo was biased and corrupt.

28. There is no credible evidence that the prosecutor "hid" Dr. Rogers' medical report at the preliminary hearing or that the evidence at the preliminary hearing was insufficient.

29. There is no credible evidence that Detective Young or any other witness planted the rock in evidence.

30. There is no credible evidence that Detective Young committed perjury or that " propaganda" impacted Petitioner's conviction.

31. There is no credible evidence that the Family Court illegally gave Petitioner's psychological report to the prosecutor to damage Petitioner's credibility and sabotage his Federal Lawsuit.

32. There is no credible evidence that the conviction for contempt was obtained because the Court was biased.

33. There is no credible evidence that the contempt conviction was obtained because Petitioner's court – appointed attorney was ineffective, and worked for the prosecutor and / or the Court.
34. There is no credible evidence that anyone tampered with transcripts, audiotapes and / or any other evidence.
35. There is no credible evidence that Petitioner's conviction was obtained because he was set up by the Court, the Prosecutor and / or Jan Saiki.
36. There is no credible evidence that the Court enforced the law selectively, inappropriately or inconsistently in Petitioner's case.
37. There is no credible evidence that the contempt conviction was obtained by abuse of power or the concealment of evidence.
38. There is no credible evidence that Petitioner's contempt conviction was obtained because he was denied the right to an attorney.
39. There is no credible evidence that the Court improperly denied Petitioner's motion for a new trial on the contempt charge.
40. There is no credible evidence that the Court declined to follow the ruling by the Hawaii Supreme Court in State v. Brown , 70 Haw 459, 776, P .2d 1182 (1989) .
41. The jury instructions given to the jury at Petitioner's trial were not improper and / or unconstitutional.
42. There was no basis for entry of Judgment Notwithstanding the Verdict based on insufficient, tainted or false evidence.
43. The Prosecutor did not make an improper summation to the jury.
44. There was no credible evidence that Petitioner's conviction was a result of the Court improperly refusing to recuse itself, prosecutorial misconduct, or

the Court improperly denying a request for change of venue by Petitioner.

45. The Court did not instruct the jury not to believe Petitioner's testimony after and during Petitioner's testimony.

CONCLUSION OF LAW

The Court makes the following conclusion of law. If it should be determined that any of these conclusions of law should have been set forth as findings of fact, then they shall be deemed as such.

1. A challenge to the sufficiency of the evidence to support the conviction, which has been affirmed by an appellate court, cannot be raised by Petition for Post – Conviction Relief. A Rule 40 proceeding is not available for this issue which has been previously ruled upon by the appellate court or that has been waived. HRPP Rule 40 (a) (3).

2. Except for a claim of an illegal sentence, an issue is waived if the Petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeus corpus proceeding or any other proceeding actually conducted, or in a prior proceeding actually initiated under this rule, and the Petitioner is unable to prove the existence of extraordinary circumstances to justify the Petitioner's failure to raise the issue. HRPP Rule 40 (a) (3). Petitioner's failure to raise said issues amounts to a waiver.

3. There is a rebuttable presumtion that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure. HRPP Rule 40 (a) (3).

4. Petitioner's claims are patently frivolous and without trace of support either in the record or from other evidence submitted by Petitioner.

5. Furthermore Petitioner had full and fair evidentiary hearings on the specific questions of fact raised during the course of the proceedings which led to the custody which is the subject of this application. Therefore, the Court denies Petitioner a hearing on his Petition Pursuant to HRPP Rule 40 (f).

6. Petitioner's Petition is Patently frivolous. The issues have been previously raised and ruled upon or have been waived. For this reason the court dismisses Petitioner's Petition pursuant to Rule 40 (g) (2). Furthermore, Petitioner's allegations and arguments have no merit and therefore, to that extent, the Court denies Petitioner's Petition pursuant to HRPP Rule 40 (g) (2).

ORDER

Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, the PETITION FOR POST – CONVICTION RELIEF IS DENIED and DISMISSED.

DATED: Kealakekua, Hawaii 11 / 2 / 05

"S/

JUDGE OF THE ABOVE – ENTITLED COURT

FILED: 2005 NOV – 4 PM 6: 09 Lani Ng. CLERK
THIRD CIRCUIT COURT STATE OF HAWAII
THIRD CIRCUIT COURT SEAL
STATE OF HAWAII
I hereby certify that this is a full, true and correct copy of the original on file in this office. "S/ Lani Ng. Clerk, Third Circuit Court, State of Hawaii
CC: Richard Adam
Dale Y. Ross, Esq.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD ADAM	)	SPP. NO. 03 – 1 – 001K
	)	
vs	)	JUDGMENT
	)	
STATE OF HAWAI'I	)	
	)	
Defendant.	)	
	)	

JUDGMENT

Pursuant to the findings of fact, Conclusion of Law & Order Denying & Dismissing Petitioner's Petition, filed November 3, 2005.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the Petition For Post Conviction Relief filed February 4, 2003 is denied and dismissed.

DATED: Kealakekua, Hawaii 11 / 4 / 05

"S/

JUDGE OF THE ABOVE – ENTITLED COURT

U. S. Priority Mail, Delivery confirmation number: 0303 2460 0002 2091 5180 to First Circuit Court, Honolulu, Hawaii, 96813 on Oct 11, 2005.
U. S. Priority Mail, Delivery confirmation number: 0303 2460 0002 2091 5203 Prosecutor Dale Ross, Kealakekua, Hawaii 96750 on Oct 11, 2005

RICHARD ADAM
141 LANCASTER ROAD Lot 30
Gorham, New Hampshire
Tel. 1 (603) 759-1810

"S/ Please send me my filed copy in prepaid envelope. Please write in Judge, time and date for this motion.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD ADAM) CASE NO. SPP 03-1-1K
) MOTION TO RECUSE
) JUDGE IBARRA BEFORE
) ANOTHER COURT UNDER
) 68 ALR 3d 513 FOR BIAS,
) PREJUDICE, INTEREST IN
) THE OUTCOME OF THIS
v) CASE, RELATIONSHIP OF
) JUDGE IBARRA TO MY
) WIFE AND OTHER PART-
) IES AND MAKING OF A
) FALSE RECORD AND THE
) THREATENING OF
) WITNESSES WHO ARE
) GOING TO TESTIFY
) AGAINST JUDGE IBARRA;
STATE OF HAWAII) CERTIFICTE OF SERVICE
) HEARING DATE:
) JUDGE:
) DATE:
) TIME:

MOTION TO RECUSE JUDGE IBARRA BEFORE

ANOTHER COURT UNDER ALR 3d 513 FOR BIAS, PREJUDICE, INTEREST IN THE OUTCOME OF THIS CASE. RELATIONSHIP OF JUDGE IBARRA TO MY WIFE AND OTHER PARTIES AND THE MAKING OF A FALSE RECORD AND THE THREATENING OF WITNESSES WHO ARE GOING TO TESTIFY AGAINST JUDGE IBARRA.

.....

DATED : Littleton , New Hampshire on October 10, 2005

"S/

RICHARD ADAM

Please send your
motion to the
Third Circuit Court
Kona

SURFACE TRANSPORTATION ONLY

APPENDIX "F"

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER: 0303 2460 0002 2091 5203

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

(Please Print Clearly)

Dale Ross
Recusal

Postmark Here

POSTAL CUSTOMER:
Keep this receipt. For inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☐ Priority Mail™ Service
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- ☐ Package Services parcel

PS Form 152, May 2002

(See Reverse)

U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER: 0303 2460 0002 2091 5180

Postage and Delivery Confirmation fees must be paid before mailing.

Article Sent To: (to be completed by mailer)

(Please Print Clearly)

First
Circuit
Recusal
16 CCG

Postmark Here

POSTAL CUSTOMER:
Keep this receipt. For inquiries:
Access internet web site at
www.usps.com®
or call 1-800-222-1811

CHECK ONE (POSTAL USE ONLY)

- ☐ Priority Mail™ Service
- ☐ First-Class Mail® parcel
- ☐ Package Services parcel

PS Form 152, May 2002

(See Reverse)

FILED: 2005 SEP 21 PM 2:47 EUGENE L. SABADO, CLERK, APPELLATE COURTS
STATE OF HAWAII
APPELLATE COURTS SEAL
STATE OF HAWAII

*** NOT FOR PUBLICATION ***

NO. 273666

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

RICHARD ADAM, Petitioner – Appellant,

vs.

STATE OF HAWAI'I, Respondent – Appellee.

APPEAL FROM THE THIRD CIRCUIT COURT, KONA DIVISION

(SPP NO. 03-1-0001K)

ORDER DISMISSING APPEAL

(By: Nakayama, J. for the court [1])

Upon review of the record, it appears that the circuit court has denied a hearing in SPP No. 03–1–0001K pursuant to HRPP 40 (f), but has not disposed of the proceedings by entering a judgment dismissing or denying the petition pursuant to HRPP 40 (g) (2). Thus, the appeal of June 1, 2005 order denying a hearing is premature and we lack jurisdiction. See HRPP 40 (h); HRS 641–11. Therefore, IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

Dated: Honolulu, Hawai'i, September 21, 2005.

FOR THE COURT

"S/

ASSOCIATE JUSTICE

---

[1] Considered by: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

FILED: 2005 JUN – 1 PM 2: 38, C. GANDALIKA,
CLERK THIRD CIRCUIT COURT,
STATE OF HAWAII
THIRD CIRCUIT COURT SEAL
STATE OF HAWAII
I hereby certify that this is a full, true and correct copy of the original on file in this office. "S/
Clerk, Third Circuit Court, State of Hawaii

CC: Richard Adam
Dale Ross, Esq.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD ADAM	) S.P.P. NO. 03 – 1 – 001K
Petitioner,	) ORDER DENYING
vs.	) PETITIONER'S MOTION
STATE OF HAWAII,	) TO SET RULE 40
Respondent.	) PETITION HEARING
	)

ORDER DENYING PETITIONER'S MOTION TO SET RULE 40 PETITION HEARING

IT IS HEREBY ORDERED THAT, Petitioner, RICHARD ADAM's Motion to set a hearing on his Rule 40 Petition on terroristic threatening and assault and contempt of court filed February 4, 2003, is denied. The Court finds that the Petitioner's claims are patently frivolous and without trace of support either in the record or from other evidence submitted by the Petitioner.

DATED: Kealakekua, Hawaii 6/1/05

"S/

JUDGE OF THE ABOVE – ENTITLED COURT

FILED: 2005 MAY 20 PM 4: 26, L. Mock Chew
Clerk Third Circuit Court
STATE OF HAWAII

RICHARD ADAM
141 LANCASTER ROAD LOT 30
GORHAM, NEW HAMPSHIRE 03581
Tel. 1 (603) 723 – 1019

Please send me my filed copy in prepaid envelope

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII	) S. P. P. No. 03 – 1 – 001K
	) MOTION TO HAVE MY
	) RULE 40 PETITION ON
vs	) TERRORISTIC THREAT –
	) ENING AND ASSAULT
	) AND CONTEMPT SET
RICHARD ADAM	) FOR A HEARING;
	) CERTIFICATE OF
	) SERVICE

MOTIION TO HAVE MY RULE 40 PETITION ON TERRORISTIC THREATENING AND ASSAULT AND CONTEMPT OF COURT SET FOR A HEARING.

1. I would like to ask this court to set my rule 40 petition set for a hearing.
2. I Richard Adam is requesting this rule 40 petition to be held in a Honolulu court or at the very least a Hilo court.
3. I do not think it would be appropriate for judge Ibarra to preside over this matter; especially since I am going to subpoena some witnesses to testify against judge Ibarra; and I do not want him to get angered with the truth again and retaliate against me and my witnesses and sentence us to prison in order to save his own self from the wrongs he has committed against me and society.

Dated : Gorham, New Hampshire , on May 13 , 2005

"S/ _____

RICHARD ADAM pro se

FILED: 2005 APR 20 AM 10: 23, NORMA T. YARA
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
ORDER DOES NOT HAVE A COURT SEAL

NOT FOR PUBLICATION

NO. 26259
IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee, v.
RICHARD LOUIS ADAM, Defendant-Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 99-19K)

SUMMARY DISPOSITION ORDER

(By: Lim, Acting C.J., Foley and Fujise, JJ.)

Defendant-Appellant Richard Louis Adam (Adam) appeals from the Order of Resentencing/ Revocation of Probation and the Judgment, both filed on December 1, 2003, in the Circuit Court of the Third Circuit (circuit court).[1] After a bench trial, Adam was found guilty of Criminal Contempt of Court, in violation of Hawaii Revised Statutes (HRS) 710-1077 (1) (g) (1993).[2] The circuit court also revoked Adam's probation for his prior convictions of Assault in the Second Degree and sentenced to an "indeterminate period of FIVE (5) YEARS for each count, to run concurrent with each other and concurrent with sentenced imposed

1/ The Honorable Ronald Ibarra presided.

2/ Hawaii Revised Statutes (HRS) 710-1077 (1) (g) (1993) provides:

710-1077 Criminal contempt of court. (1)

A person commits the offense of criminal contempt of court if : ..... (g) The person knowingly disobeys or resists the process, injunction, or other mandate of a court [.]

For Criminal Contempt of Court ." Adam was sentenced on the Criminal Contempt of Court charge to thirty days of imprisonment.

On appeal, 3/ Adam contends the circuit court (1) abused its discretion in revoking his probation and resentencing him to five years of imprisonment; (2) erred in ruling that Adam waived his right to a trial on his contempt charges before a different judge because it is a non-waivable constitutional right; (3) erred in ruling that Adam was in contempt of court for failing to appear on August 1, 2002; and (4) erred by ruling that Adam waived his right to a court-appointed attorney for sentencing.

Upon careful review of the record and the briefs submitted by the parties, we hold:

(1) The circuit court did not abuse its discretion in revoking Adam's probation and resentencing him. State v. Tauiliili, 96 Hawai'i 195, 198, 29 P. 3d 914, 917 (2001).

(2) Adam fails to show a "Clear and precise demonstration of prejudice" on the part of the circuit court judge. Aga v. Hundahl, 78 Hawai'i 230, 242, 891 P.2d 1022, 1034

3/ The opening brief of defendant-Appellant Richard Louis (Adam) fails to comply with Hawai'i rules of Appellate Procedure (HRAP) Rule 28 (b) (7) in failing to include in the argument section of the brief "citations to the ..... parts of the record relied on."

Pursuant to HRAP rule 28 (b) and (c), the State's answering brief fails to comply with HRAP 28 (b) (3) and (7) by including only sporadic "record references supporting each statement of fact or mention of court ..... Proceedings" in the statement of the case and no record references in the argument section of the brief.

(1995). The circuit court did not err in accepting Adam's decision not to request a trial before a different judge.

(3) There was substantial evidence to support the circuit court's conclusion that Adam willfully disobeyed the court and was therefore guilty of Contempt of Court. State v. Brown, 70 Haw. 459, 463, 776 P. 2d 1182, 1186 (1989).

(4) The circuit court found that Adam was "trying to deliberately delay" by failing to hire a private attorney or accepting a court-appointed attorney. Throughout his case, Adam had eight court-appointed attorneys. The circuit court did not abuse its discretion by sentencing Adam without granting Adam additional time to hire a private attorney. State v. Char, 80 Hawai'i 262, 267, 909 P. 2d 590, 595 (App. 1995).

Because Adam failed to ensure that the October 13, 2003 transcript (the hearing where the circuit court approved Adam's last court-appointed attorney's motion to withdraw) was made a part of the record on appeal before this court, this court is precluded under State v. Hoang, 93 Hawai'i 333, 3 P. 3d 499 (2000), from considering Adam's contention that the circuit court failed to comply with the requirements of Char and State v. Dickson, 4 Haw. App. 614, 673 P. 2d 1036 (1993).

Therefore,

IT IS HEREBY ORDERED that the Judgment and Order of Resentencing / Revocation of Probation filed on December 1, 2003 in the Circuit Court of the Third Circuit are affirmed.

DATED: Honolulu, Hawai'i, April 20, 2005.

On the briefs:

Shawn A. Luiz
For the defendant-appellant.

"S/
Acting Chief Judge

Dale Yamada Ross,
Deputy Prosecuting Atorney,
County of Hawai'i,
For plaintiff – appellee.

"S/
Associate Judge

"S/
Associate Judge

FILED: FEB 11 AM 10: 08, E. M. RIMANDO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
ORDER DOES NOT HAVE A COURT SEAL

NOT FOR PUBLCTION
NO. 26259
IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I
STATE OF HAWAI'I Plaintiff – Appelle, v.
RICHARD LOUIS ADAM, Defendant - Appellant

APPEAL FROM THE THIRD CIRCUIT COURT
(CR. NO. 99 – 19K)
ORDER DENYING APPELLANT'S MOTION FOR THE RELEASE OF EXCULPATORY EVIDENCE THAT IS BEING WITHHELD FROM ME IN THE FORM OF ORIGINAL COURT REPORTER TAPES

(By: Lim, Acting C. J., Foley and Fujise, JJ.)

Upon consideration of Defendant – Appellant Richard Louis Adam's "Motion for the release of Exculpatory Evidence that Is Being Withheld from Me in the Form of Original Court Reporter Tapes" filed on February 9, 2005, the attachments thereto, and the records and files in this case,
IT IS HERBY ORDERED that the motion is denied.
DATED: Honolulu, Hawaii, February 11, 2005.
On the motion:
Richard Louis Adam,
Defendant – appellant pro se

"S/
Acting Chief Judge

Associate Judge

Associate Judge

APPENDIX "K"

FILED: 2003 MAY 20 AM 9: 20, L. Kitaoka,
CLERK THIRD CIRCUIT COURT
STATE OF HAWAII
I hereby certify that this is a full, true and correct copy of the original on file in this office. "S/ Clerk, Third Circuit Court, State of Hawaii

FRANK L. MILLER, 2280 – 0
POST OFFICE BOX 415
KEALAKEKUA, HAWAI'I 96750 – 0415
TELEPHONE NO. 323 – 2252
ATTORNEY FOR DEFENDANT

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

RICHARD LOUIS ADAM	) S. P. P. NO. 03 - 1 – 001K
	) ORDER GRANTING
Petitioner,	) MOTION TO CONTI –
	) NUE HEARING ON
vs.	) PETITION TO VACATE
	) SET ASIDE, OR COR –
	) RECT JUDGMENT OR
STATE OF HAWAII	) RELEASE PETITIONER
	) FROM CUSTODY,
Respondent.	) FILED FEBRUARY 4,
	) 2003
	) JUDGE: Hon. Ronald
	) IBARRA
	) Hearing Date: May 1,
	) 2003

ORDER GRANTING MOTION TO CONTINUE HEARING ON PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT OR TO RELEASE PETITIONER FROM CUSTODY, FILED FEBRUARY 4, 2003

A hearing on Defendant RICHARD LOUIS

ADAM's MOTION TO CONTINUE HEAEING ON PETITION TO VACATE, SET ASIDE, OR CORRECT JUDGMENT OR TO RELEASE PETITIONER FROM CUSTODY, FILED FEBRUARY 4, 2003 (Rule 40 Petition), April 28, 2003, was held May 1, 2003; Defendant was present with counsel FRANK L. MILLER, and the State was represented by CAROL S. W. KITAOKA, Deputy Prosecuting Attorney; and based on the representations and arguments presented, and for good cause:

IT IS HEREBY ORDERED that the hearing on Defendant's Rule 40 Petition shall be continued until moved on by Defendant.

Dated: Kealakekua, Hawaii, May 19, 2003

"S/ HONORABLE RONALD IBARRA (SEAL)

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:
"S/

CAROL S. W. KITAOKA or DALE YAMADA ROSS DEPUTY PROSECUTING ATTORNEYS

FILED : 2002 FEB 22 P 12: 42 , K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I
ORDER DOES NOT HAVE A COURT SEAL

NO. 23451

IN THE SUPREME COURT OF THE STATE OF HAWAII

STATE OF HAWAII , Respondent / Plaintiff – Appellee

v.

RICHARD LOUIS ADAM , Petitioner / Defendant – Appellant

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS (CR . NO. 99 – 019K)

ORDER

(By : Moon , C. J. , Levinston , Nakayama , Ramil , and Acoba , JJ .)

Petitioner / Defendant – Appellant Richard Louis Adam having filed a February 15 , 2002 motion for reconsideration of the January 28 , 2002 order dismissing writ of certiorari , and there being no reconsideration on a writ of certiorari , and HRAP Rule 40 . 1 (h) ("Neither acceptance nor rejection of an application for a writ of certiorari shall be subject to a motion for reconsideration ..... The rejection of an application for certiorari shall be final .") ,

IT IS HEREBY ORDERED that the motion is dismissed .

DATED : Honolulu , Hawai'i , February 22 , 2002 .

Richard Adam , pro se ,
On the motion .

"S/

FILED 1999 NOV 29 P 2: 18, L. NAKAGAWA
CLERK, APPELLATE COURTS
STATE OF HAWAII
ORDER DOES NOT HAVE A COURT SEAL

NO. 22800

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I	) CR. NO. 99-019K
	)
Plaintiff-Appellee,	)
	)
vs.	)
	)
RICHARD LOUIS ADAM	)
	)
Defendant-Appellant,	)
	)

ORDER DISMISSING APPEAL

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that: (1) the August 26, 1999 charges and for disqualification of the prosecutor are not appealable under HRS 641-11 or 641-17 inasmuch as judgment has not been entered in Criminal No. 99-019K and the August 26, 1999 orders were not certified for interlocutory appeal; (2) the August 26, 1999 orders do not meet the "irreparable loss of right" requirement of the collateral order exception because the right asserted by Appellant -- the due process right to be provided with timely discovery -- does not rest upon an explicit statutory or constitutional guarantee that trial will not occur, but is a right whose remedy requires dismissal of the criminal charges; see Midland Asphalt Corp. v. United States, 489 U. S. 794, 801 (1989); United States, v. Hollywood Motor Car Co., 458 U. S.

263 , 269 (1982) . Therefore ,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction .

Dated : Honolulu . Hawai ' i . November 29 . 1999 .

"S/

RONALD T. Y. MOON
Chief Justice

"S/

ROBERT G. KLEIN
Associate Justice

"S/

STEVEN H. LEVINSON
Associate Justice

"S/

PAUL A. NAKAYAMA
Associate Justice

"S/

MARIO R. RAMIL
Associate Justice